

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,)	
)	
)	
Plaintiff,)	
)	Civil Action No.
v.)	
)	Judge
)	
WASTE MANAGEMENT)	
OF WISCONSIN, INC.)	
)	
Defendant.)	
_____)	

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

STATEMENT OF THE CASE

1. This is a civil action brought pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9606, 9607 ("CERCLA"). The United States seeks injunctive relief in order to remedy conditions in connection with the release or threatened release of hazardous substances into the environment at or from the City Disposal Corporation Landfill Superfund Site ("Site") in Dane County,

Wisconsin. The United States also seeks to recover unreimbursed costs incurred and to be incurred for response actions undertaken or to be undertaken in connection with the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action and over Defendant pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this District pursuant to Section 106(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9606(a) and 9613(b), and 28 U.S.C. §§ 1391(b) and (c) because the claims arose and the threatened and actual releases of hazardous substances occurred within this judicial district.

THE SITE

4. The City Disposal Corporation Landfill Superfund Site encompasses approximately 38 acres in the Town of Dunn, Dane County, Wisconsin.

5. The Site was listed on the CERCLA National Priorities List ("NPL") on or about September 21, 1984. The NPL, established pursuant to Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and 40 C.F.R. Part 300, lists sites throughout the United States that, because of releases or threatened releases of hazardous substances, pose a significant threat to human health and the environment.

6. Defendant, Waste Management of Wisconsin, Inc. ("WMWI"), with other parties, conducted a Remedial Investigation and Feasibility Study ("RI/FS") for the Site from 1986 to 1992.

7. On or about September 28, 1992, U.S. EPA selected a response action for the Site. The selected remedy includes: A) extraction and treatment of contaminated groundwater; B)

groundwater monitoring; C) groundwater use restrictions; D) construction of a hazardous waste landfill cover over the former landfill disposal cells 6 and 12; E) construction of a solid waste landfill cover over the remainder of the Site; F) venting and treatment of landfill gases; G) in-site vapor extraction and treatment of volatile organic contaminants in the landfill waste material; and H) operation and maintenance of all components of the remedy.

THE DEFENDANT

8. Defendant Waste Management of Wisconsin, Inc. is a corporation organized under the laws of the State of Wisconsin. Defendant is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

GENERAL ALLEGATIONS

9. The Site is a "facility" within the meaning of 42 U.S.C. § 9601(9).

10. A "release" or threatened "release" of "hazardous substances" into the environment has occurred at or from the Site, as those terms are defined in Section 101(14) and 101(22) of CERCLA, 42 U.S.C. § § 9601(14) and 9601(22).

11. As a result of the releases or threatened releases of hazardous substances into the environment at the Site, the United States has incurred in excess of \$15,000 in unreimbursed response costs, excluding prejudgment interest, within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25). The United States is continuing to incur response costs in connection with the Site.

12. Defendant holds title to the Site. Defendant and/or its corporate predecessor owned and operated the Site from approximately 1966 to 1976, during which time hazardous substances, as defined in 42 U.S.C. § 9601(14), were disposed of at the Site.

FIRST CLAIM FOR RELIEF -- CERCLA SECTION 106(a)

13. The allegations contained in paragraphs 1 - 12 are realleged and incorporated herein by reference.

14. Section 106(a) of CERCLA, 42 U.S.C. § 9605(a), provides in pertinent part:

[W]hen the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

15. The President's functions under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), have been delegated to the Administrator of the U.S. EPA.

16. U.S. EPA has determined that there may be an imminent and substantial endangerment to the public health or welfare or to the environment at the Site because of the release and threatened release of hazardous substances.

17. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), authorizes the United States to bring an action to secure such relief as may be necessary to abate the danger or threat at the Site.

18. Under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), the defendant is liable to implement the response action selected by U.S. EPA for the Site, in order to abate conditions at the Site that may constitute an imminent and substantial endangerment to public health or welfare or the environment.

SECOND CLAIM FOR RELIEF

19. The allegations contained in paragraphs 1-12 are realleged and incorporated herein by reference.

20. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

(a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section –

(1) the owner and operator of a vessel or facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

. . . from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for--

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan. . . .

The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D).

21. Defendant is within the class of persons described in Section 107(a)(1) and 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(1) and (a)(2).

22. The actions taken by the United States in connection with the Site constitute "response" actions within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), in connection with which the United States has incurred and will continue to incur costs.

23. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Defendant is liable for all unreimbursed past response costs incurred by the United States in connection with responses to releases or threatened releases of hazardous substances at the Site, and all future response costs to be incurred by the United States in connection with responses to releases or threatened releases of hazardous substances at the Site, including but not limited to costs of investigation, remedial action, removal action, oversight and enforcement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, prays that this Court:

1. Order Defendant Waste Management of Wisconsin, Inc. to perform the response actions selected in U.S. EPA's Record of Decision dated September 28, 1992, for the Site;
2. Enter judgment against Defendant Waste Management of Wisconsin, Inc. to reimburse all unreimbursed past response costs incurred by the United States and a determination that Defendant Waste Management of Wisconsin, Inc. will be liable for all response costs to be incurred by the United States not inconsistent with the National Contingency Plan in connection with the Site; and
3. Grant such other and further relief as this Court deems to be just and proper.

Respectfully submitted,

W. Benjamin Fisherow
Deputy Chief
Environment and Natural Resources Division
U.S. Department of Justice

Steve C. Gold
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20530

STEPHEN P. SINNOTT
Acting United States Attorney
Western District of Wisconsin

Leslie K. Herje
Assistant United States Attorney

OF COUNSEL:

Brian Barwick
Assistant Regional Counsel
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590